

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:FSH:MAN:TL-N-3859-00  
OSullivan

date:

to: Taxpayer Advocate Service  
Attn: Pat Seagren, Associate Advocate, Holtsville, New York

from: Area Counsel, LM:FSH1:MAN

subject:

EIN: [REDACTED]

Taxable Years Ended: December 31, [REDACTED] December 31, [REDACTED]

Forms: 1120 and 1042

Uniform Issue List # 6404.04-02, 6513.02-00, 6611.03-00

You asked for advice concerning the accrual of overpayment interest for the above listed taxpayer. Our advice relies on facts provided by Pat Seagren, Associate Advocate at the Taxpayer Advocate's Office. The advice rendered in this memorandum is conditioned on the accuracy of the facts provided to us.

Issue:

1. Whether the taxpayer is entitled to an abatement of interest assessed on an "erroneous refund."
2. Whether a credit balance of \$ [REDACTED] on the [REDACTED]'s [REDACTED] account for Form 1120 should be transferred to the taxpayer's [REDACTED] account for Form 1120.
3. Whether the taxpayer is entitled to receive interest during the period [REDACTED] through [REDACTED].

Conclusion:

1. No. The alleged "erroneous refund" issued on [REDACTED] of \$ [REDACTED] exceeds \$ [REDACTED] which brings the refund outside of the relief provisions of I.R.C. § 6404(e)(2).
2. To the best of our knowledge, as of the writing of this

memorandum, [REDACTED]'s Form 1120 [REDACTED] tax module does not have a credit balance of \$[REDACTED]. Accordingly, this amount is not available to be carried over to [REDACTED]'s Form 1120 for [REDACTED].

3. No, because the balance on which the taxpayer is requesting the accrual of overpayment interest is considered a payment of tax for the subsequent year under I.R.C. § 6513(d).

**Facts:**

[REDACTED] [EIN: [REDACTED]] ("[REDACTED]"), files both Forms 1120, U.S. Corporation Income Tax Return, and Forms 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, annually. [REDACTED] [EIN: [REDACTED]] ("[REDACTED]"), the successor corporation to [REDACTED] as of [REDACTED], filed the relevant tax returns for [REDACTED] and the subsequent years.

**Form 1120**

[REDACTED] filed its corporate income tax return on [REDACTED] reflecting a zero tax liability and a credit elect of \$[REDACTED] to be applied against its [REDACTED] corporate income tax liability, which we confirmed by reviewing a copy of page 1 of the taxpayer's [REDACTED] income tax return. [REDACTED]'s Form 1120 tax module for [REDACTED] reflects application of a \$[REDACTED] payment on [REDACTED], the unextended due date of [REDACTED]'s [REDACTED] Form 1120. The [REDACTED] Form 1120 module reverses the application of the \$[REDACTED] as of [REDACTED] as a correction to the account. The Service then applied \$[REDACTED] and \$[REDACTED] of the [REDACTED] Form 1120 \$[REDACTED] overpayment to [REDACTED]'s [REDACTED] Form 1042 underpayment. The balance of the overpayment, \$[REDACTED], was applied to [REDACTED]'s [REDACTED] Form 1120 tax liability as of [REDACTED], the due date of the first estimated tax installment payment for [REDACTED]. Following is a table demonstrating the postings to [REDACTED]'s Form 1120 account for [REDACTED]:

Cycle	Description	Posted		Balance
[REDACTED]	Tax return received [REDACTED]	[REDACTED]	\$ -	\$ -
	Estimated Tax Payment	[REDACTED]	\$ ( [REDACTED] )	\$ ( [REDACTED] )
	Overpayment transferred [REDACTED]	[REDACTED]	\$ [REDACTED]	\$ [REDACTED]
	Overpayment transferred [REDACTED]	[REDACTED]	\$ [REDACTED]	\$ [REDACTED]
	Interest due on o/p	[REDACTED]	\$ [REDACTED]	\$ [REDACTED]
	Credit Elect transferred	[REDACTED]	\$ [REDACTED]	\$ [REDACTED]
	Overpayment under \$ [REDACTED]	[REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Form 1042

filed its Form 1042 on reflecting a withholding tax liability of \$. On , filed an amended Form 1042 reflecting a withholding tax liability of \$, less than the liability on the original return. This amended return did not post to 's Form 1042 tax module. The taxpayer made estimated tax payments totaling \$. Thus, the Service's records showed a deficit in 's Form 1042 account and diverted \$ and \$ of the taxpayer's Form 1120 credit elect to 's Form 1042 as of .

Eventually, the Service realized that the amended return had not posted and the excess tax withholding of \$ was abated on . The Service then transferred the \$ credit in the taxpayer's Form 1042 account to 's Form 1120 tax account as of , the due date of the Form 1120. This transaction is reversed as of . Eventually during the week of , the Service transferred \$ to 's Form 1042 account. We did not receive any of the underlying documents for these transactions. Following is a table showing the postings to 's Form 1042 account for :

Cycle	Description	Posted		Balance
	Tax return received		\$	\$
	Federal Tax Deposit		\$ (	\$
	Federal Tax Deposit		\$ (	\$
	Federal Tax Deposit		\$ (	\$
	FTP Penalty		\$	\$
	Assessed Interest		\$	\$
	Overpayment applied from		\$ (	\$
	Overpayment applied from		\$ (	\$
	Overpayment applied from		\$	\$
	Abate FTP Penalty		\$ (	\$
	Abate Interest		\$ (	\$
	Abate Prior Tax		\$ (	\$
	Credit Transferred to		\$	\$
	Abate FTP Penalty		\$ (	\$
	Abate Assessed Interest		\$ (	\$
	Interest Due Overpayment		\$ (	\$
	Overpayment refund		\$	\$
	Reverse Credit Transfd to		\$ (	\$
	Abate Assessed Interest		\$ (	\$
	Interest Due		\$ (	\$
	Overpayment refund		\$	\$
	Reverse Interest Due tp		\$	\$

	Canceled Refund Deposit		\$ (	\$ (
	Credit Transferred to		\$ (	\$ (
	Generated Assessed Interest		\$ (	\$ (
	Credit Transferred to		\$ (	\$ (
	Generated Assessed Interest		\$ (	\$ (

Form 1120

filed its Form 1120 on reporting a tax liability. As stated above the \$ from was posted and then reversed out as an error. The \$ remaining in the account after \$ posted to the Form 1042, was applied towards the Form 1120 tax liability. Since the income tax liability for was the entire amount applied and prepaid was carried forward to 's corporation income tax liability. As of a \$ credit was applied from the Form 1042 account. This credit plus \$ was then transferred to 's income tax account. However, after the transfer to 's income tax account, the Service reversed the application of the credit from the Form 1042 to this account. The taxpayer paid \$ on to satisfy a liability. The Service erroneously posted it to the account. The Service then corrected the error and transferred the payment to , leaving the account with a balance. Following is a table depicting the transactions to this account:

Cycle	Description	Posted		Balance
	Tax Return Received		0	
	Estimated Tax payment		\$ (	\$ (
	Correct Est. Tax Payment		\$ (	\$ (
	Credit Elect o/p applied		\$ (	\$ (
	Estimated Tax payment		\$ (	\$ (
	Credit Elect Transferred to		\$ (	\$ (
	Credit Applied (from		\$ (	\$ (
	Credit Applied (from		\$ (	\$ (
	Credit Transferred (to		\$ (	\$ (
	Credit Applied (from		\$ (	\$ (
	Interest due on overpayment		\$ (	\$ (
	Overpayment refund		\$ (	\$ (
	Error Correction-Credit Applied		\$ (	\$ (
	Reverse interest due tp		\$ (	\$ (
	Error correction-credit applied		\$ (	\$ (
	Credit applied (from		\$ (	\$ (
	Subsequent Payment		\$ (	\$ (
	Assessed Interest		\$ (	\$ (
	Error Correction-Credit Applied		\$ (	\$ (

	Reverse Credit Trfd to		\$		\$	
	Abate Assessed Interest		\$		\$	
	Correct Subsequent Payment		\$		\$	
	Underpayment cleared		\$		\$	
	Subsequent Payment		\$		\$	
	Assessed Interest		\$		\$	
	Reversal of underpayment cleared		\$		\$	
	Overpayment transferred		\$		\$	

Form 1042

filed its Form 1042 on reflecting a liability of \$ which was fully paid. As of \$, \$ had been credited from the taxpayer's Form 1042 account to this account. Since no tax was due for this account, the Service refunded this amount to the taxpayer plus interest. Following is a table depicting the transactions to this account:

Cycle	Description	Posted		Balance
	Return filed		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Federal Tax Deposit		\$	\$
	Underpayment cleared under \$		\$	\$
	Credit Applied		\$	\$
	Reversal of underpayment cleared		\$	\$
	Interest Due on Overpayment		\$	\$
	Overpayment Refund		\$	\$

Form 1120

's Form 1120 was received by the Service on reflecting a tax liability of \$. The taxpayer received a refund of \$ due to the credit elect from the taxpayer's Form 1120 plus estimated tax

payments. Then, the \$ [REDACTED] credit from [REDACTED]'s Form 1042 was applied against the [REDACTED] tax liability and then reversed. Nevertheless, on [REDACTED] the taxpayer was issued a refund of \$ [REDACTED], the erroneous refund at issue. Again, the Service applied a credit of \$ [REDACTED] to this account. This time the credit was applied from the taxpayer's [REDACTED] Form 1120 account. Also, like the previous credit it was reversed. Meanwhile, on [REDACTED], the taxpayer paid \$ [REDACTED] to repay the erroneous refund plus interest. This payment was first applied to the taxpayer's [REDACTED] Form 1120 account then transferred to [REDACTED]. Following is a table depicting the transactions to the taxpayer's Form 1120 account for [REDACTED]:

Cycle	Description	Posted	[REDACTED]	Balance
[REDACTED]	Tax return received [REDACTED]	[REDACTED]	\$ [REDACTED]	\$ [REDACTED]
	Credit Elect Overpayment Applied		\$ ( [REDACTED] )	\$ [REDACTED]
	Estimated Tax Payment		\$ ( [REDACTED] )	\$ ( [REDACTED] )
	Interest Due Taxpayer		\$ ( [REDACTED] )	\$ ( [REDACTED] )
	Refund prior to Settlement		\$ [REDACTED]	\$ [REDACTED]
	Credit Applied from [REDACTED]		\$ ( [REDACTED] )	\$ ( [REDACTED] )
	Reverse Credit Applied error		\$ [REDACTED]	\$ [REDACTED]
	Interest Due Taxpayer		\$ ( [REDACTED] )	\$ ( [REDACTED] )
	Refund prior to Settlement		\$ [REDACTED]	\$ [REDACTED]
	Credit Applied from [REDACTED]		\$ ( [REDACTED] )	\$ [REDACTED]
	Subsequent Payment		\$ ( [REDACTED] )	\$ ( [REDACTED] )
	Correct Credit Applied Error		\$ [REDACTED]	\$ ( [REDACTED] )
	Generated Assessed Interest		\$ [REDACTED]	\$ ( [REDACTED] )
	Reverse Interest due Taxpayer		\$ [REDACTED]	\$ [REDACTED]
	Overpayment applied from [REDACTED]		\$ ( [REDACTED] )	\$ [REDACTED]

### Discussion:

#### Issue #1: Abatement of Interest on Erroneous Refund

Section 6404(e) (2) provides for the abatement of interest on erroneous refunds until the Service demands repayments. However, this relief is not available in cases in which the taxpayer causes the erroneous refund or the erroneous refund exceeds \$50,000. I.R.C. § 6404(e) (2).

The taxpayer claims that the Service erroneously refunded \$ [REDACTED] on [REDACTED] from the [REDACTED] income tax module. On [REDACTED], the taxpayer made a payment of \$ [REDACTED] to repay the erroneous refund plus interest. The taxpayer seeks relief of the \$ [REDACTED] interest paid (\$ [REDACTED] - \$ [REDACTED]). However, since the erroneous refund exceeds \$ [REDACTED], the taxpayer does not qualify for an interest abatement.

Issue #2 Transfer of Account Balance from [REDACTED] to [REDACTED]

The transcript dated [REDACTED] shows a [REDACTED] balance in the taxpayer's account for [REDACTED]. Accordingly, there is no credit to apply to [REDACTED] as the taxpayer requests.

Issue #3 Accrual of Interest from [REDACTED] through [REDACTED]

Under Treas. Reg. § 301.6402-(3)(b)(6), the Service may credit an overpayment "against any outstanding liability for any tax...owed by the taxpayer making the overpayment, and only the balance, if any, shall be treated in the manner so elected." Thus, the Service had authority to credit \$[REDACTED] of the \$[REDACTED] overpayment, which the taxpayer elected to credit to its [REDACTED] income tax liability, to the taxpayer's 1042 account. Once the Service corrected the \$[REDACTED] credit to the taxpayer's [REDACTED] Form 1042 account, the \$[REDACTED] reverted to its prior status as an overpayment in [REDACTED] which the taxpayer elected to carry forward to [REDACTED].

According to the taxpayer's letter dated [REDACTED] the taxpayer requests interest on the transfer from "[REDACTED] 's (EIN [REDACTED]) [REDACTED] Form 1042 account from [REDACTED], the date the credit is available, to [REDACTED], the due date for [REDACTED] 's Form 1042 for [REDACTED]." The taxpayer disregards that the transfer originated as a portion of the [REDACTED] "overpayment" that the taxpayer elected to apply to its [REDACTED] estimated tax payment.

Interest is not recoverable on an obligation owed by the Government unless explicitly provided by statute or contract. Rosenman v. United States, 323 U.S. 658, 663 (1945). Section 6611(b)(1) provides that "interest shall be allowed and paid... [i]n the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken." Treasury Regulation section 301.6611-1(h)(2) provides that, in general, the term due date means "the last day fixed by law or regulations for the payment of the tax."

Section 6513(d) provides that if any overpayment of income tax is, in accordance with I.R.C. § 6402(b), claimed as a credit against estimated tax for the succeeding tax year, such amount shall be considered as a payment of income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year) and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises. See also I.R.C. § 6513(a) which provides that a payment of income tax made before

the date prescribed for payment of the tax is considered paid on that date. The date prescribed for payment of tax is the time fixed for filing the return (determined without regard to any extension of time for filing the return). I.R.C. § 6151(c). Further, it is on this date that the overpayment is treated as a payment for purposes of computing interest on any overpayment of income taxes with respect to the succeeding year under I.R.C. § 6611(a) and (d).

The [REDACTED] "overpayment" which the taxpayer elected to credit against its estimated tax installments for its [REDACTED] tax liability would be considered a payment of income tax for [REDACTED] under I.R.C. § 6513(d). No interest would accrue on the crediting of the [REDACTED] "overpayment" to the [REDACTED] estimated tax payments. The estimated tax payments would be deemed paid on the date prescribed for the payment of the taxpayer's [REDACTED] tax liability, which is the due date of the taxpayer's [REDACTED] income tax return. The date prescribed for the payment of the taxpayer's [REDACTED] income tax liability without extension is [REDACTED]. Accordingly, the taxpayer is not entitled to interest on the [REDACTED] credit elect prior to [REDACTED]. Overpayment interest does not accrue during the period of [REDACTED] through [REDACTED] as requested by the taxpayer.

If you have any questions about the above, please telephone Oleida Sullivan of our office at (212) 264-1595, extension 233.

ROLAND BARRAL  
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By: \_\_\_\_\_

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